

ATTORNEY FILE.: KCX-654A (19124A)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application	)	Examiner: Paula L. Craig
Michael T. Morman et al.	)	
	)	Art Unit: 3761
Serial No.: 10/730,493	)	
	)	Deposit Account: 04-1403
Filed: December 8, 2003	)	
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Confirmation No.: 2537	)	

Title: ABSORBENT ARTICLE WITH ELASTOMERIC BORDERED NECKED  
MATERIAL BODYSIDE LINER AND METHOD OF MAKING

APPELLANT'S REPLY APPEAL BRIEF

Mail Stop Appeal Brief – Patents  
Commissioner for Patents  
P.O. box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.41 for the subject application, Appellant hereby  
submits its reply appeal brief to the Examiner's Answer mailed February 2, 2008.

7. APPELLANT'S REPLY to EXAMINER'S RESPONSE to ARGUMENT:

In lines 1-2 of the Response to Arguments section of the Examiner's Answer on page 15 thereof it is contended (emphasis added):

However, **Serbiak teaches** that the various disclosed elements may be combined (**col. 12, lines 23-26**).

But Serbiak col. 12, lines 23-30 merely states:

While not specifically disclosed, any combination of the elements shown in FIGS. 1-9 and a wide variety of variations thereon is contemplated. For example, any embodiment shown may include or exclude either waist elastics 38 and/or leg elastics 40. Also, any embodiment shown may include extensible zones 30 with an elastic layer 28 and/or extensible zones 30 without an elastic layer 28.

Yet apart from the two examples given, Serbiak does not say what elements may be combined with what elements. And even in the two examples that are given, Serbiak does not say where extensible zones 30 without an elastic layer 28 would be located. Thus, what Serbiak can fairly be said to teach, falls short of what is described in appellant's claims.

In lines 18-21 of the Response to Arguments section of the Examiner's Answer on page 15 thereof, the following citations to Serbiak (col. 2, lines 8 – 14, col. 3, lines 52 – 54, col. 4, lines 38 – 42, col. 6, lines 10 – 14 and 41 – 43, col. 8, lines 18 – 20, col. 9, lines 33-36, col. 10, lines 12 – 32, Claims 3, 12, 31, 44, 48) are summed up as follows (emphasis added):

**Taken together**, these teachings suggest direct attachment of the absorbent core and the bodyside liner in the nonextensible areas of Serbiak.

The problem with all of these Serbiak citations "taken together" is that these

references are not to any single coherent embodiment disclosed in Serbiak. Rather, they are references to different embodiments of Serbiak and implicate about **ten different embodiments** of Serbiak, including contradicting pairs. Col. 2, lines 8 – 14 refers to a product embodiment that may or may not differ from the product embodiment described at col. 3, lines 52 – 54. Col. 4, lines 38 – 42 refers to a method, which must differ from the product embodiments. Col. 6, lines 10 – 14 and 41 – 43 and col. 8, lines 18 – 20 refer to a **second embodiment** of Figs. 1 and 2. Col. 9, lines 33-36 refers to a **third embodiment** of Fig. 5. Col. 10, lines 12 – 15 refers to a **fourth embodiment** of Fig. 6. Col. 10, lines 16 – 32 refers to a **fifth embodiment** of Fig. 7. Each of Serbiak claims 12, 18, 23, 31, and 48 refers to its own separate embodiment. Serbiak claims 12 and 18 are mutually exclusive for example. Nor has the Office set forth how what is described in any one of Serbiak claims 12, 18, 23, 31, and 48 renders obvious either appellant's claim 1 or claim 18 as a whole.

The first full paragraph on page 16 of the Examiner's Answer states (emphasis added):

Applicant argues that **direct bonding** is completely different from **indirect attachment**. Applicant's specification suggests that **direct bonding** and **indirect bonding** are equivalent in some contexts (specification, page 8, lines 23 – 28, paragraph 37 as published). Popp also suggests that direct and indirect bonding are equivalent (Popp, col. 2, lines 48 – 53).

However, paragraph 37 of appellant's published application merely states (emphasis added):

[0037] "**Attached**" and "**joined**" refers to the bonding, adhering, connecting, and any other method for attaching or joining two elements, including conventional methods of

ultrasonic, adhesive, mechanical, sewing, stitching, hydroentangling. Two elements will be considered to be **attached** or **joined** together when they are bonded directly to one another or indirectly to one another, such as when each is directly attached to an intermediate element.


Thus, paragraph 37 is inapplicable to the meaning of directly bonded or indirectly bonded because paragraph 37 defines the meaning of "attached" and "joined," not directly bonded or indirectly bonded. "Directly bonded" appears in appellant's claims, but "attached" and "joined" do not.

On their faces, the ordinary plain meanings of "directly bonded" and "indirectly bonded" would be expected to be different, and thus a special definition equating the two would be necessary to overcome this plain meaning to the person of ordinary skill. Accordingly, the absence of any such special definition in appellant's published application to equate "directly bonded" with "indirectly bonded" is far more telling on this issue than what was said in paragraph 37 of appellant's published application. The same could be said about any specific definitions applicable to the Popp invention, which Popp definitions cannot be relied upon to equate in appellant's claims, terms that have different ordinary plain meanings.

Respectfully submitted,

DORITY & MANNING, P.A.

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James M. Bagarazzi  
Reg. No. 29,609  
P.O. Box 1449  
Greenville, S C 29602-1449  
(864) 271-1592